

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1530

United States of America,

Appellee,

v.

Cynthia Collette Vandry,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: January 11, 2007

Filed: January 29, 2007

Before MURPHY, HANSEN, and SMITH, Circuit Judges.

PER CURIAM.

Cynthia Collette Vandry appeals the district court's¹ denial of her Rule 35(b) motion to reduce her sentence. Assuming excusable neglect exists to pardon the untimeliness of her notice of appeal, we affirm the district court's denial of Vandry's motion. "There is no provision in Rule 35(b) of the Federal Rules of Criminal Procedure for a motion by a defendant for a reduction based upon a claim of substantial assistance to the [G]overnment." United States v. Palmer, 297 F.3d 760,

¹The Honorable Ronald E. Longstaff, United States District Judge for the Southern District of Iowa.

768 (8th Cir. 2002), cert. denied, 537 U.S. 1143, cert. denied, 537 U.S. 1213, and cert. denied, 538 U.S. 937 (2003). To the extent Vandry argues that the Government should have filed a Rule 35(b) motion, she has failed to make a "substantial threshold showing" that the Government's refusal to file the motion, which was left to the Government's sole discretion in the plea agreement, was based on an unconstitutional motive, and the Government's refusal is therefore not subject to judicial review. See United States v. Marks, 244 F.3d 971, 975 (8th Cir. 2001). The district court's judgment is affirmed. See 8th Cir. R. 47B.
